IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1066 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.K.TRIVEDI
and
HON'BLE MR.JUSTICE M.S.SHAH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHAIKH KASAMBHAI @ BADSHAH AMIR BADSHAH
Versus
STATE OF GUJARAT

Appearance:
1. Criminal Appeal No. 1066 of 2003
MR HN BRAHMBHATT for Appellant No. 1
MR KC SHAH APP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE D.K.TRIVEDI
and
HON'BLE MR.JUSTICE M.S.SHAH

Date of decision: 13/10/2003

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.K.TRIVEDI)

In view of our order dated 30.9.2003, while admitting the appeal, we have called for the R&P from the trial Court and hearing of the appeal was fixed with the consent of learned APP today i.e. on 13.10.2003. In

view of above, R&P is already reached to this court.

2. Mr. Brahmbhatt, learned advocate, who appeared on behalf of appellant, on perusing the R&P has requested us that though at the time of admission of appeal, he has not pressed the appeal on merits and challenge was only in respect of the order of sentence passed by the learned trial Judge, however, it is his contention that in light of the decision in the matter of Babulal Shantilal Gameti Vs. State of Gujarat in Criminal Appeal No. 33 of 2003 dated 4.9.2003, liberty be granted to the appellant, in case after the accused is heard on the point of sentence, to challenge the said order of conviction and sentence on merit and accordingly, it is his submission that while disposing of this appeal, this court may remand the matter to the trial Court to hear the appellant accused on the point of sentence.

3. Mr. K.C. Shah, learned APP has submitted that it is correct to say that the narcotic substance Charas, which was found from the possession of the appellant accused is 151 Gram and 800 Ml. Gram and said quantity is admittedly less than the commercial quantity prescribed under the table in N.D.P.S Act and the learned Trial Judge has discretion, in view of amendment in NDPS Act, while imposing sentence.

4. Mr. Brahmbhatt, learned advocate has accordingly while challenging the order of sentence, submitted that in view of the prosecution case itself, the appellant accused was found in possession of 151 Gram and 800 Ml. Gram of charas on 23.1.2003 at 18.30 hours on Kalol Banglades Road, worth Rs.4604=00 and in light of decision of this court, order of sentence imposed by the learned Trial Judge be set aside by directing the trial Court to hear the appellant accused on the point of sentence. He has placed reliance upon the decision in case of Babulal Shantilal Gameti Vs. State of Gujarat in Criminal Appeal No. 33 of 2003 dated 4.9.2003, wherein, this court has considering the other decisions of this Court, had remanded the matter back for consideration by the learned Trial Judge to examine the order of sentence in light of amended provisions of the NDPS Act and the fact that from the possession of the accused, less than the commercial quantity was found.

5. In our view, appeal is partly allowed. The matter is remanded to the trial Court only with a direction to consider the aspect of imposition of quantum of punishment in light of the amended provisions of NDPS Act. The appellant is not pressing conviction on merits

at this stage, with a liberty to challenge the legality and validity of the judgement on merits as well as on the point of sentence before the appropriate forum after the matter is decided by the learned Trial Judge. Matter is accordingly remanded, as aforesaid, only for the limited purpose of reconsidering the question of quantum of punishment after hearing the accused and the counsel for the parties. The trial Court shall accordingly hear the accused on the point of sentence and decide the matter as early as possible. The Registry of this court is directed to transmit forthwith the R&P of Special (NDPS) Case No. 1 of 2003 in favour of learned Trial Judge.

(D.K. Trivedi, J.)

(M.S. Shah, J.)
pallav